

## **EXHIBIT I**



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In Re: Methyl Tertiary Butyl Ether ("MtBE")  
Products Liability Litigation**

MDL No. 1358  
Master File C.A. No.  
1:00-1898 (SAS)

This document relates to the following cases:

*City of New York v. Amerada Hess Corp., et al.*

04 Civ. 3417

**EXPERT REPORT OF**      **Donald K. Cohen, CPG**  
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Donald K. Cahan

February 7, 2009

Mr Bell

February 7, 2009

**Signature**

Date

Section 3  
Technical Approach

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peak concentrations in the wells, the composite capture zones are considered an approximate indicator of the correlation between release and detection in a well. This method is a standard and generally accepted method for evaluation of capture zones around wells.

### **3.2.3. Time of Reported Spills**

Potential MTBE sources in or near the model predicted capture zones were identified from the Toxics Targeting database, relying heavily on the NYSDEC Spills database. The Spills database files, FOIL information, and defendant supplied remediation files were reviewed to determine, or at least estimate, the timing of the release of MTBE at each site.

However, a limitation in the evaluation of potential sources is that the date that the spills were reported is not necessarily the date that the spill occurred. Often, contamination is only first discovered when an underground storage tank is upgraded or replaced, indicating a prior release or releases. In such instances, it is often times the case that the owner first reports the release to the NYSDEC and a spill number and report is opened in the Spills database. Because of this time lag, the exact timing and extent of a release can only be said to have occurred sometime before the report was filed, presenting another limitation to the evaluation of its impact. Professional judgment was required in conjunction with the available data to properly assess the timing and extent of releases.

Additionally, varying degrees of emphasis were placed on reported spills based on volume. Less emphasis was placed on small volume spills at residential or other non-commercial locations, one time spills of less than 10 gallons, small spills reported as cleaned up, or spills on paved roadways due to auto accidents or other incidental releases. More emphasis was placed on reported releases from commercial retail gasoline stations or other automotive facilities where large volumes of gasoline are handled, and/or where gasoline containing USTs had failed tank tightness testing. Of special note, if not special emphasis, were retail gasoline stations or other automotive facilities where waste oil or motor oil had been reported as contamination in the soil or groundwater. In many cases, such as the Atlas Station at 108-46 Merrick Blvd (NYSDEC Spill #8806289) the original spill report was entered as a waste oil release discovered during an underground storage tank replacement. On further investigation, MTBE was discovered at concentrations up to 17,000 ppb on the site, highlighting the fact that the potential impact from a site could not be discounted based on what appeared to be a non-gasoline related release.